

# SPLIT CLOSING INSTRUCTION

This Split Closing Instruction (hereinafter referred to as Agreement) concerns the closing of a transaction between the following parties and real property:

Seller \_\_\_\_\_  
Buyer \_\_\_\_\_  
Lender \_\_\_\_\_  
Property \_\_\_\_\_

The Buyer's side of the closing will occur at \_\_\_\_\_ Title Agency.  
Escrow Officer \_\_\_\_\_  
Phone No. \_\_\_\_\_ FAX No. \_\_\_\_\_ E-mail \_\_\_\_\_  
The Seller's side of the closing will occur at \_\_\_\_\_ Title Agency.  
Escrow Officer \_\_\_\_\_  
Phone No. \_\_\_\_\_ FAX No. \_\_\_\_\_ E-mail \_\_\_\_\_

**1. Split Closing.** Seller and Buyer have agreed for their convenience to utilize Seller's Title Agency and Buyer's Title Agency to furnish title and/or escrow services with respect to the transaction, rather than utilizing one Title Agency to perform all such services. Seller and Buyer agree that they and Seller's Title Agency and Buyer's Title Agency shall act and interact as provided herein with respect to the closing and the transaction.

**2. Title Agencies' Duties.** Title Agencies owe, to each other and to Buyer and Seller, duties to follow the terms of this Agreement, to follow the other lawful written instructions given to them by Buyer, Seller, and any Lender, to exercise good faith and fair dealing toward all parties to the transaction, and to cooperate to facilitate the closing of the transaction. Neither of the Title Agencies shall be obligated to follow or be liable under any instruction unless written.

**3. Agency.** If Seller's, Buyer's, and/or Lender's instructions relating to closing contemplate or provide that a single party will perform the functions to be performed by the Title Agencies under this Agreement the parties agree that each of the Title Agencies may delegate in writing certain functions or obligations to fulfill as part of closing the transaction. Although still responsible, one of the Title Agencies may delegate in writing to the other Title Agency part of its obligations imposed by Seller, Buyer, or Lender. The Title Agency completing a delegated obligation hereby indemnifies the other Title Agency and the Buyer or Seller or Lender, as the case may be, from loss or damage for failing to complete the delegated obligation. Each of the Title Agencies shall be responsible and liable to Buyer, Seller, and any Lender for its own compliance with this Agreement, but not for the other Title Agency's compliance with this Agreement. Each of the Title Agencies agree that, with respect to the written instructions received from the other Title Agency, those instructions will either be followed or, if the Title Agency receiving the instructions refuses to follow those instructions, the Title Agency will notify Buyer, Seller, any Lender, and the other Title Agency in writing that it refuses to follow that instruction. If a Title Agency refuses to follow an instruction from the other Title Agency, each of the parties to this Agreement shall take no further action towards the closing of the transaction until all parties to this Agreement agree on the instructions to be followed. With

respect to this Agreement, the same may be signed in counterparts and delivered in original form or by facsimile or email.

**4. Title Commitments and Policies.** Either or both of the Title Agencies expect to provide a Commitment to issue a Policy of Title Insurance insuring ownership and/or a Lender's interest in the Property. Prior to closing, each Title Agency shall promptly generate its respective Commitment and supply a copy to the other Title Agency.

(a) Seller's Title Agency shall issue a Commitment for an Owner's Policy of Title Insurance to Buyer, and, upon closing, an Owner's Policy of Title Insurance to Buyer as insured. Seller agrees that it shall have no contractual or other rights under any Commitment or Policy issued by Seller's Title Agency to Buyer.

(b) Buyer's Title Agency expects to issue a Commitment to the Lender committing to issue a Lender's Policy of Title Insurance to Lender, and if the transaction closes as contemplated, a Policy of Title Insurance in favor of Lender insuring the Lender's encumbrance against the Property. Seller and Buyer agree and understand that they shall have no contractual or other rights under any Commitment or Policy issued by Buyer's Title Agency to Lender.

(c) Buyer and Seller agree and understand that unless a Commitment or Policy is issued to them as a proposed insured or insureds, they shall have no rights or claims against the Title Agencies for title related issues or commitment or policy related issues concerning the Property unless either or both of the Title Agencies breach this Agreement or another written Agreement with the parties addressing the claim in question, and then only a claim based upon such breach.

**5. Seller's Title Agency's Closing Obligations.** Seller's Title Agency shall perform the following functions with respect to the closing of the transaction:

(a) Inform the Buyer's Title Agency, of the time scheduled to close with the Seller.

(b) Arrange for the execution, acknowledgement, and delivery of a deed, as required by the purchase contract, transferring title to the Property from Seller to Buyer.

(c) Prepare and secure Seller's execution of Seller's side of a Settlement Statement (HUD-1).

(d) Arrange for Seller's execution and/or delivery of any other documents to be executed by Seller, including the following documents in accordance with this Agreement:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

(e) Receive from Seller any funds required to close the transaction.

(f) Clear title as to financial obligations and objected to encumbrances shown on its commitment.

**6. Buyer's Title Agency Closing Obligations.** Buyer's Title Agency shall perform the following functions with respect to the closing of the transaction:

(a) Inform the Seller's Title Agency of the time scheduled to close with Buyer.

(b) Arrange for the execution and, if required, acknowledgement, and delivery of a Promissory Note, Trust Deed or Mortgage, and any other required documents pertaining to any loan to Buyer concerning the transaction.

(c) Prepare and secure Buyer's execution of Buyer's side of a Settlement Statement (HUD-1).

(d) Arrange for Buyer's execution and/or delivery of any other documents to be executed by Buyer, including the following documents in accordance with this Agreement:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

(e) Receive from Buyer any funds required to be paid by Buyer with respect to the transaction.

(f) Clear title as to objectionable matters shown on its commitment.

**7. Conditions to Closing.** Seller's Title Agency and Buyer's Title Agency shall not record or deliver the documents and funds possessed by them relating to the transaction until all of the following conditions have been fulfilled:

(a) Seller's Title Agency shall notify Buyer's Title Agency that it has possession of all of the documents described above in Paragraph 5 duly executed and, where required, acknowledged, and delivered, and possesses in cleared and collected funds, paid by Seller if required by Seller's Settlement Statement.

(b) Buyer's Title Agency shall notify Seller's Title Agency that it has in its possession all of the documents described above in Paragraph 6 duly executed and, where required, acknowledged, and delivered, and that it possesses in cleared and collected funds all amounts to be paid at closing by Buyer and/or Buyer's Lender as prescribed in Buyer's Settlement Statement.

(c) Buyer's Title Agency shall have searched the applicable public records and correctly determined that no matters affecting title to the Property have appeared or been recorded since the Effective Date of the Commitment issued by Buyer's Title Agency and shall have notified Seller's Title Agency that this condition has been fulfilled.

**8. Implementation of Closing.** Upon fulfillment of all the conditions to closing set forth in the preceding paragraph, the Title Agencies shall implement the closing as follows and in the following order:

(a) Seller's Title Agency shall deliver to Buyer's Title Agency the deed, duly executed and acknowledged by Seller and any other documents possessed by Seller's Title Agency intended for delivery to Buyer or Buyer's Lender.

(b) Buyer's Title Agency shall record the deed, any Trust Deed of Lender, and any additional encumbrances and documents in the order directed by the parties to the transaction.

(c) **Buyer's Title** Agency shall immediately after recordation transfer, **via wire**, to Seller's Title Agency all funds to be paid to Seller's Title Agency.

(d) Buyer's Title Agency and Seller's Title Agency shall:

- (i) disburse all funds in accordance with **their respective** Settlement Statements;
- (ii) issue the policies committed to Buyer and Lender; and
- (iii) provide evidence of payment of liens, including the Notice of Intent to Release or Reconvey, to the other Title Agency within two (2) days of disbursement.

**9. Liability and Responsibilities.** In the event any party to this Agreement suffers damage as a result of any improper recording or failure to record or clear a title exception or any tardy payment or lack of payment to be effectuated by either of the Title Agencies, the Title Agency failing to timely and properly record, clear an exception, or make payment shall be liable at law or in equity to the other parties to this Agreement and any Lender for any damages suffered by **any** of them as a result of that Title Agency's default hereunder.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

[BUYER'S TITLE AGENCY]

[SELLER'S TITLE AGENCY]

\_\_\_\_\_  
Printed Name [Seller's Settlement Agent]

\_\_\_\_\_  
Printed Name [Buyer's Settlement Agent]

\_\_\_\_\_  
Printed Name [Seller]

\_\_\_\_\_  
Printed Name [Buyer]